



NONHUMAN RIGHTS PROJECT

# “Habeas Corpus for Nonhuman Animals”

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Executive Director

The Nonhuman Rights Project

Idaho State Bar, CLE Presentation

April 9, 2019



## NONHUMAN RIGHTS PROJECT

Founded in 1996 by attorney Steven M. Wise, the Nonhuman Rights Project (NhRP) works to secure legally recognized fundamental rights for nonhuman animals through litigation, advocacy, and education. Our mission is to change the legal status of at least some nonhuman animals from mere “things,” which lack the capacity to possess any legal right, to “persons,” who possess such fundamental rights as bodily integrity and bodily liberty and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them. Our current plaintiffs are members of species who have been scientifically proven to be autonomous: currently, great apes, elephants, dolphins, and whales.

# Our Approach

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NONHUMAN RIGHTS PROJECT

# Welfare vs. Rights



Still prioritizes the  
interests of humans.



Prioritizes animals'  
own interests.



NONHUMAN RIGHTS PROJECT





## Litigation

In December, 2013, the NhRP filed the world's first common law habeas corpus petition on behalf of a nonhuman animal when we filed on behalf of Tommy, a chimpanzee we found alone in a cage in a shed on a trailer lot in upstate New York.









## Litigation

What is “common law habeas corpus”?

The “common law” is the law that judges make, as opposed to acts of legislatures, parliaments, or the executive.

At one time, the common law was the primary source of law that judges used in deciding cases, and it still plays an important role in parts of the law.



## Litigation

Habeas corpus is one of the oldest “tools” in the common law.

Habeas corpus was created to protect the autonomy of “persons” and historically was used to contest private and unlawful detention (i.e., it could be invoked to get the state involved in setting an innocent “person” free, including by force if necessary).



Litigation

The key word is “person”: Who counts as one?

Why does it matter?



## Litigation

The law generally categorizes the world crudely into “things” or “persons.” We can also understand this distinction as “objects” and “subjects.”

In the eyes of the law, all that “person” means is the capacity for legal rights.



## Litigation

Habeas corpus has a rich and unique history of being used to *force* the legal system to accept the personhood and fundamental rights of what were then “legal things” including slaves, Native Americans, and women, and set them free from their abusive “owners” or “masters.”





## Litigation

In the eyes of the law, “person” has never been and still is not a matter of biology; rather it’s a matter of public policy.

After hundreds of years of struggle, it is now the birthright of every human being to be a person.

For hundreds of years before that, corporations and ships, among other nonhuman entities, were already being treated as “persons.”



## Litigation

A “person” can have a theoretically infinite number of rights, while a “thing” is incapable of having any rights, even those which protect her most fundamental interests.

Currently, virtually every nonhuman animal in the world is a legal thing.



## Litigation

We build our cases around those principles that judges claim to believe in, including liberty, equality, and **autonomy**.

Autonomy is one of the most important principles in our court cases, and drives much of the scientific evidence we submit, including scientific affidavits from some of the world's leading experts in nonhuman animal cognition.



## Litigation

Science shows beyond doubt that we are not the only species who have and value our autonomy.

A primary stated purpose of the law is to protect autonomy.

We argue autonomy is a *sufficient but not necessary* basis for personhood and rights.

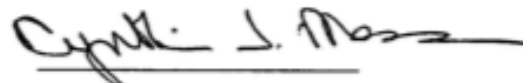


33. Further related to empathy, coalitions and cooperation have been documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when a family group tries to 'kidnap' a calf from an unrelated family (Lee 1987, Moss and Poole 1983). These behaviours are based on one elephant understanding the emotions and goals of the coalition partner (Bates et al 2008).

34. Cooperation is also evident in experimental tests with captive Asian elephants, whereby elephants demonstrated they can work together in pairs to obtain a reward, and understood that it was pointless to attempt the task if their partner was not present or could not access the equipment (Plotnik et al 2011). Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviours that is required to achieve that goal; it is based on (at the very least) short-term action planning.

48. Both African and Asian elephants evidently share many key traits of autonomy with humans, and so parsimoniously it must be concluded that elephants are also autonomous beings.


49. Scientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered.

  
Cynthia J. Moss

24. None of the many field staff, students and other researchers who have worked among the Gombe chimps for 55 years have ever been really harmed. We have been hit, stamped on and dragged during displays, but never received bite wounds. One male in particular, Frodo, was continually charging people and hitting them, and he sometimes pushed me over. It is clear, however, that the chimpanzees only intend to impress, to emphasize their superiority. They could so easily harm us badly, even kill us. On three separate occasions, when I was above a very steep drop, Frodo charged up but did not make contact. Our videographer, Bill Wallauer, reported four such occasions. It was very clear to us that Frodo understood what would have happened on those seven occasions. The same thing happened to me once with a different alpha male. They are clear examples of intention *not* to harm.

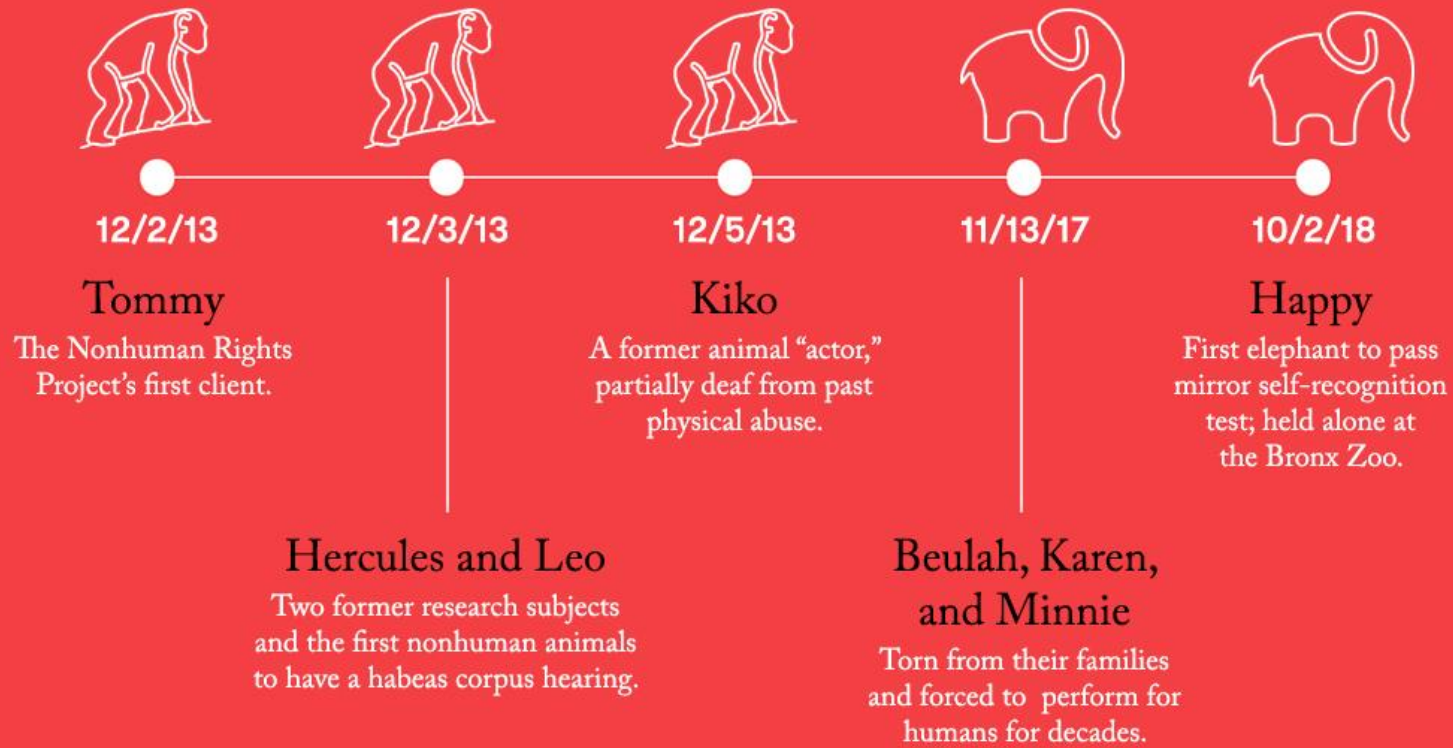
25. I have written about a male chimpanzee in captivity who rescued his human caretaker, Mark Cusano, with whom he had a close relationship, from a very bad attack from three adult females. Mark told me that the chimp had saved his life.

26. Based upon my research and expertise in this field, I support the NhRP's petition for a writ of habeas corpus on behalf of Tommy and the application of common law personhood to chimpanzees.

  
Jane Goodall, Ph.D, DBE



# Our Clients



NONHUMAN RIGHTS PROJECT





# Hercules and Leo

Two former research subjects  
and the first nonhuman animals  
to have a habeas corpus hearing.



FILED: NEW YORK COUNTY CLERK 04/20/2015 12:50 PM

INDEX NO. 152736/2015

NYSCEF DOC. NO. 34

RECEIVED NYSCEF: 04/20/2015

At I.A.S Part 12 of the  
Supreme Court of the State of  
New York, held in and for the  
County of New York, at the  
Courthouse thereof, 80 Centre  
Street, New York, NY, on the  
20 day of April, 2015

**BARBARA JAFFE**  
**J.S.C.**

PRESENT: HON. \_\_\_\_\_  
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of a Proceeding under Article 70 of the CPLR  
for a Writ of Habeas Corpus,

THE NONHUMAN RIGHTS PROJECT, INC., on  
behalf of HERCULES and LEO,

Petitioner,  
-against-

SAMUEL L. STANLEY JR., M.D., as President of  
State University of New York at Stony Brook a/k/a  
Stony Brook University and STATE UNIVERSITY  
OF NEW YORK AT STONY BROOK a/k/a STONY  
BROOK UNIVERSITY,

Respondents.

**RECEIVED**  
**APR 17 2015**  
**PART 12**

**ORDER TO SHOW CAUSE &  
WRIT OF HABEAS CORPUS**

Index No.: 152 736/15

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, That upon the annexed Verified Petition of Elizabeth Stein,  
Esq. and Steven M. Wise, Esq. (subject to *pro hac vice* admission), filed the 19th day of  
March, 2015, the exhibits and affidavits attached thereto, the Memorandum of Law in  
support of the Verified Petition, and upon all pleadings and proceedings herein, the Respondents







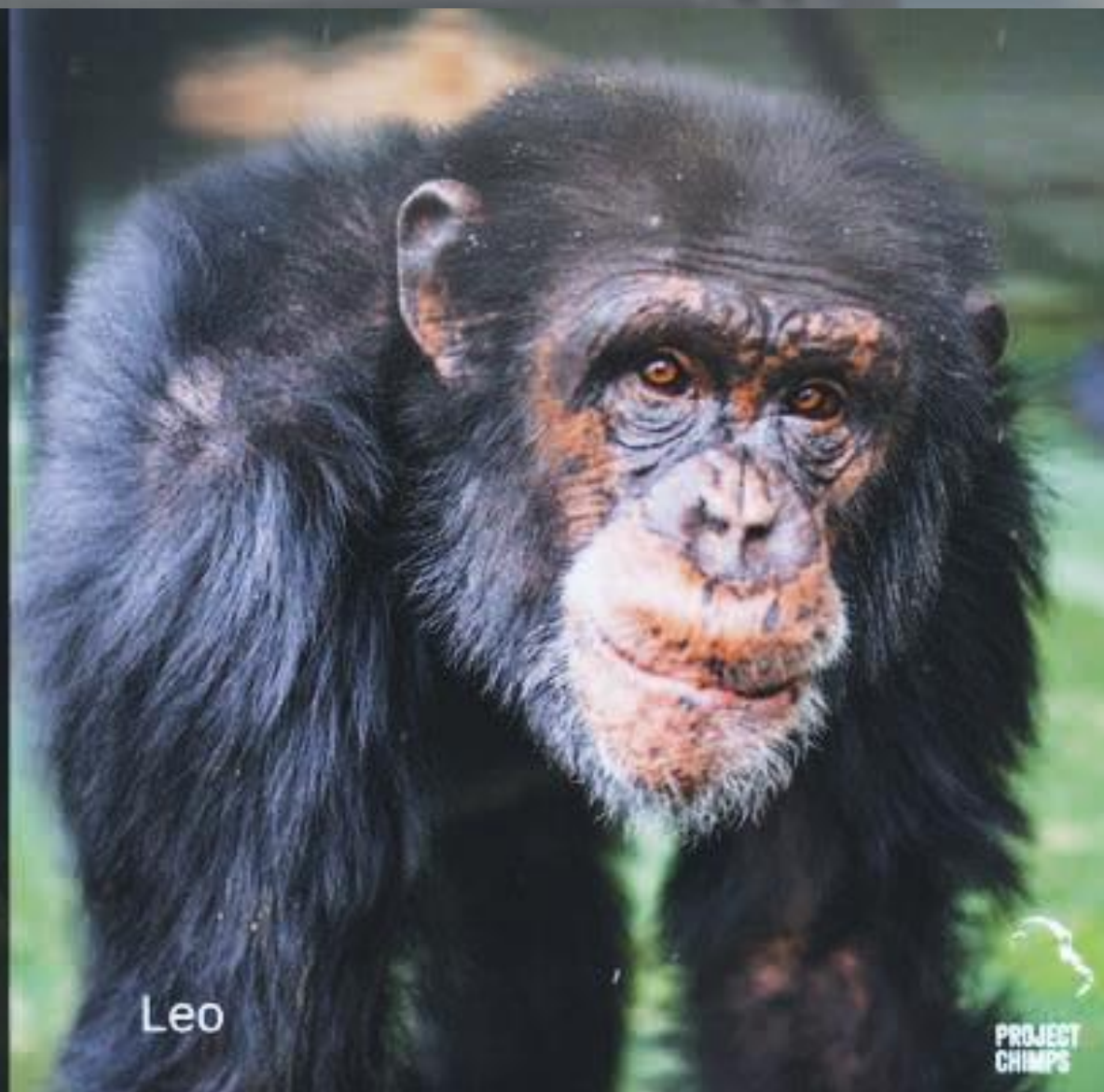
“ Isn't it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law? ”

- Justice Barbara Jaffe





Hercules



Leo

PROJECT  
CHIMPS







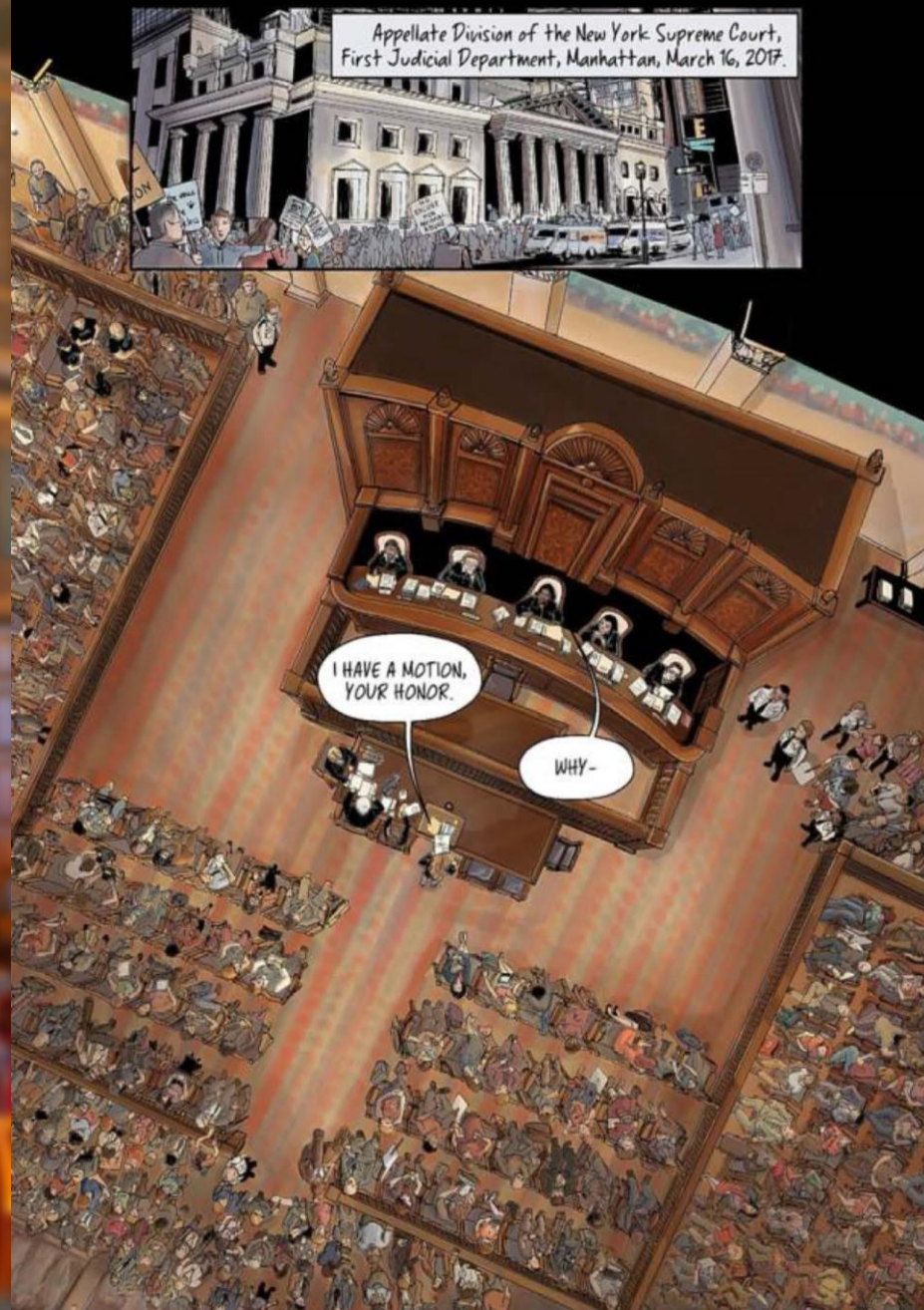
# Tommy & Kiko

The Nonhuman Rights Project's first client. A former animal "actor," partially deaf from past physical abuse.

Tommy's first case began in December 2013 and ended in an appeal decision in 2014 stating that rights require a correlative ability to bear "social duties and responsibilities," and that chimpanzees lack it.

Kiko's first case began in December 2013 and ended in an appeal decision in 2015 stating that seeking transfer to sanctuary was not an appropriate use of habeas corpus since we were not seeking "immediate release."







On May 8, 2018, Judge Eugene Fahey of the New York Court of Appeals issued an opinion in *Nonhuman Rights Project v. Lavery*, which begins:

*“The inadequacy of the law as a vehicle to address some of the most difficult ethical dilemmas is on display in this matter.”*

State of New York  
Court of Appeals

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Motion No. 2018-268  
In the Matter of Nonhuman Rights Project, Inc.,  
on Behalf of Tommy,  
Appellant,

v.  
Patrick C. Lavery, &c., et al.,  
Respondents.

-----  
In the Matter of Nonhuman Rights Project, Inc.,  
on Behalf of Kiko,  
Appellant,

v.  
Carmen Presti et al.,  
Respondents.

Decided May 8, 2018:

Motion for leave to appeal denied. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia and Wilson concur, Judge Fahey in an opinion. Judges Stein and Feinman took no part.

FAHEY, J. (concurring):

The inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter.

-3-

30

*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*,  
31 N.Y.3d 1054 (May 8, 2018) (“*Tommy*”) (Eugene Fahey, J., concurring)



The Appellate Division's conclusion that a chimpanzee cannot be considered a "person" and is not entitled to habeas relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species (see Nonhuman Rights Project, Inc., 152 AD3d at 78 [stating that petitioner's argument "that the ability to

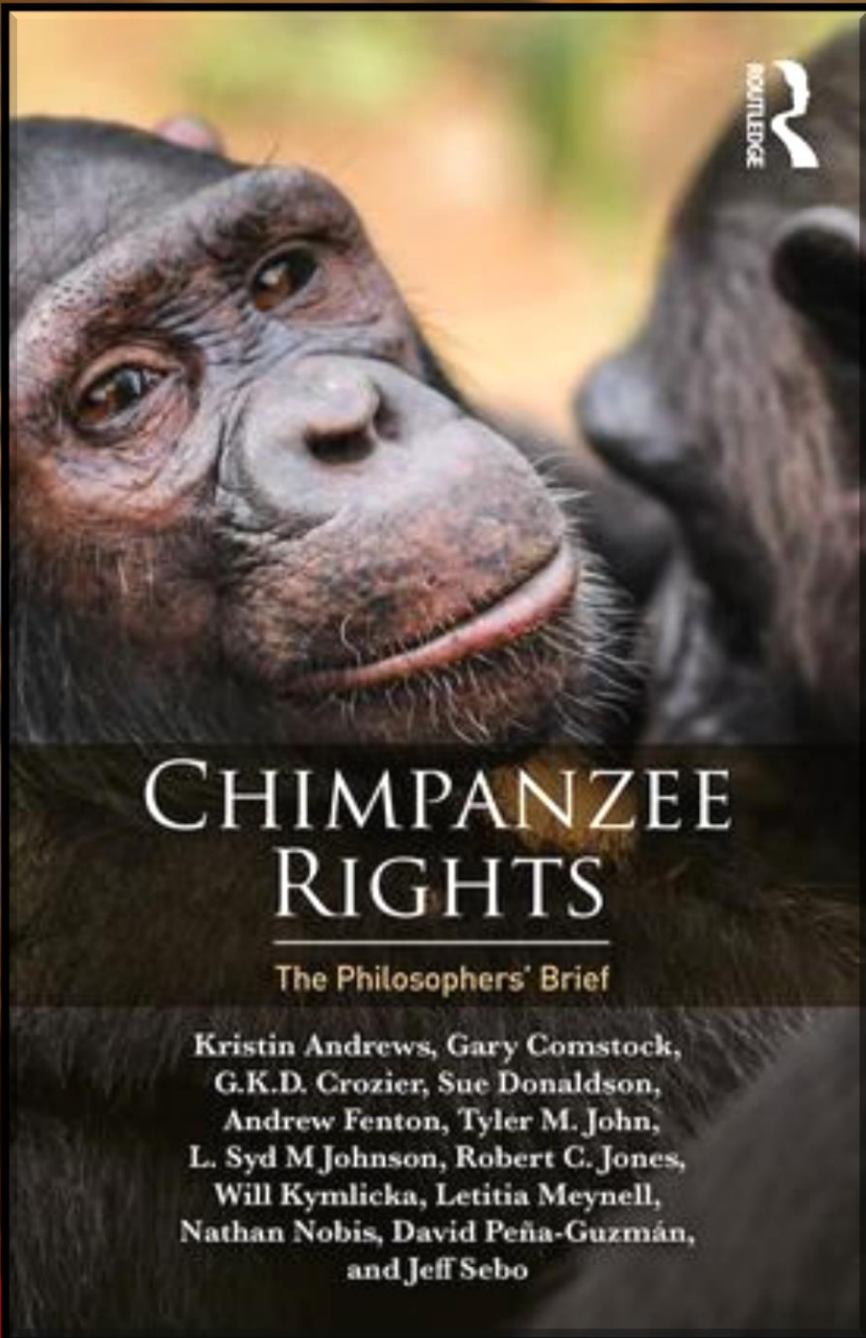
Boumediene v Bush, 553 US 723 [2008]), but, in elevating our species, we should not lower the status of other highly intelligent species.

*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*,  
31 N.Y.3d 1054 (May 8, 2018) ("Tommy") (Eugene Fahey, J., concurring)

through sign language. Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor. Moreover, the amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences (see Tom L. Beauchamp, Victoria Wobber, Autonomy in chimpanzees, 35 Theoretical Medicine and Bioethics 117 [2014]; see generally Jane Goodall, The Chimpanzees of Gombe: Patterns of Behavior 15-42 [1986]).

*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*,  
31 N.Y.3d 1054 (May 8, 2018) (“*Tommy*”) (Eugene Fahey, J., concurring)





“We write as a diverse group of philosophers who share the conviction that if the concept of ‘personhood’ is being employed by the courts to determine whether to extend or deny the writs of habeas corpus, they should employ a consistent and reasonable definition of ‘personhood’ and ‘persons.’ We believe that the previous judgements offered by the Third, Fourth, and First Departments of the Appellate Division of the New York Supreme Court applied inconsistent definitions of ‘personhood.’”


Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention. To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect (see generally Regan, The Case for Animal Rights 248-250).

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through sign language. Chimpanzees re-  
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L. Deuschamp, Victoria Webber, *Autonomous*  
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approach. Petitioner seeks the transfers of

*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*,  
31 N.Y.3d 1054 (May 8, 2018) (“*Tommy*”) (Eugene Fahey, J., concurring)

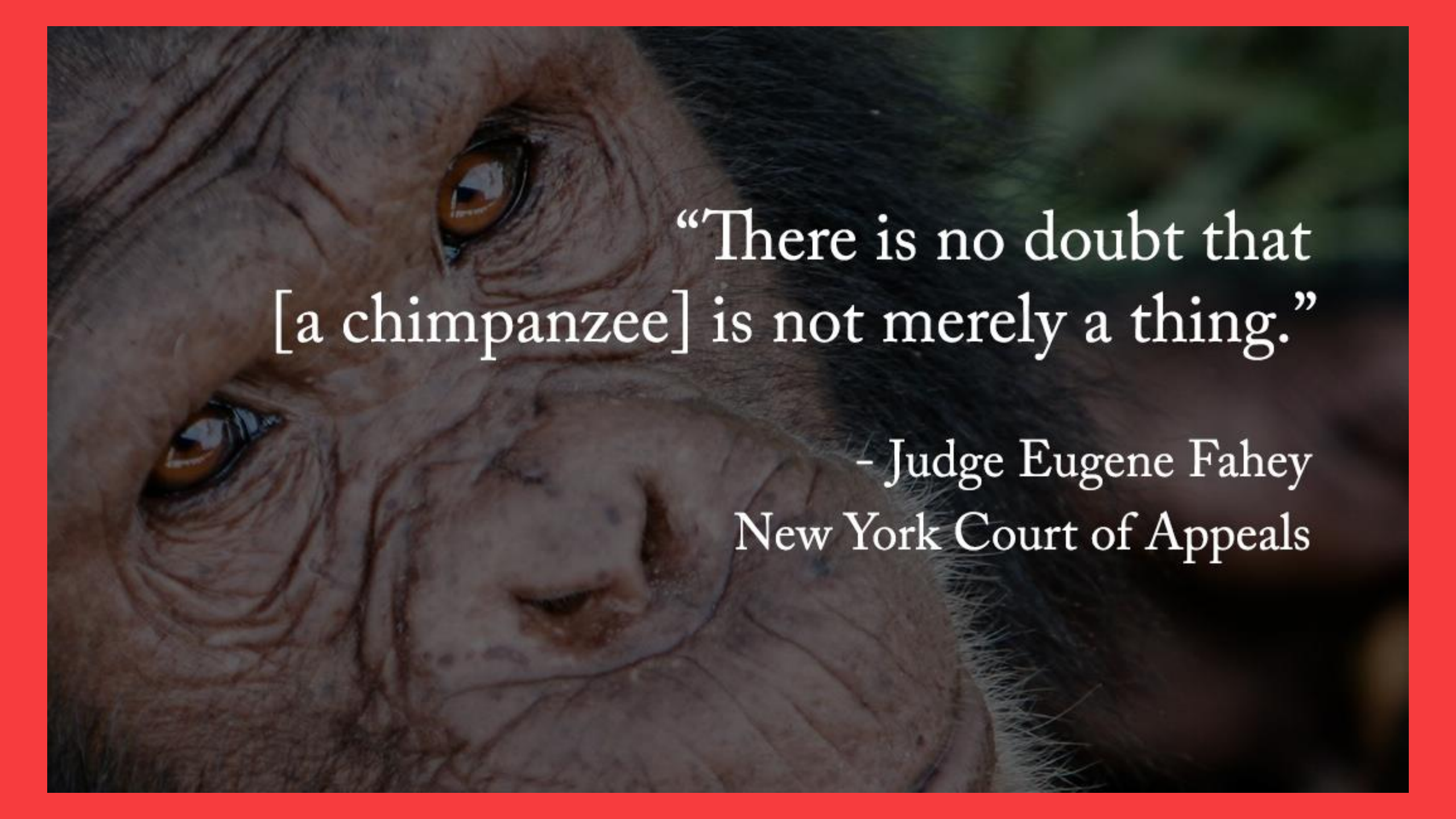




**“ The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a ‘person,’ there is no doubt that it is not merely a thing. ”**

- Judge Eugene M. Fahey -  
Associate Judge on the NY Court of Appeals



A close-up photograph of a chimpanzee's face, showing its eyes, nose, and mouth. The chimpanzee has a contemplative expression. The image is overlaid with white text. The background of the entire image is a solid red color.

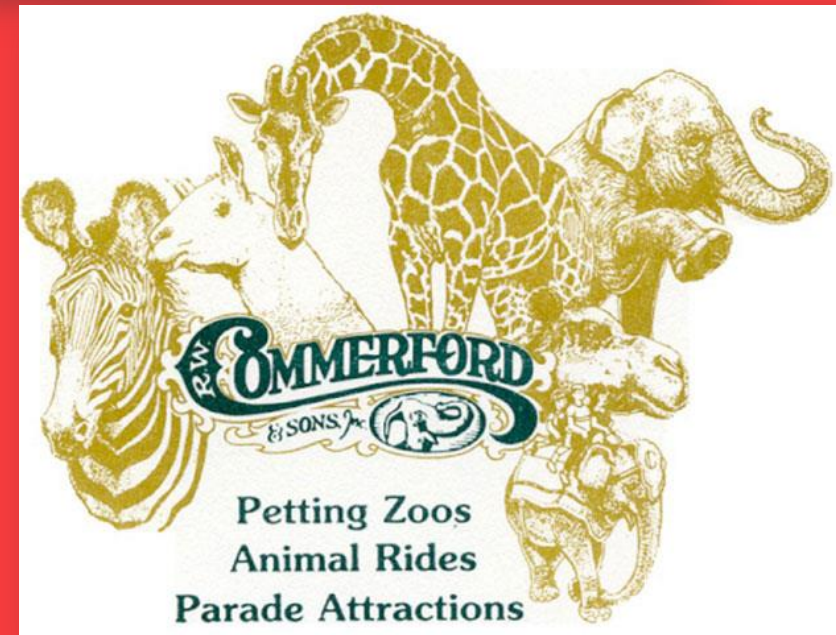
“There is no doubt that  
[a chimpanzee] is not merely a thing.”

- Judge Eugene Fahey  
New York Court of Appeals



# Beulah, Karen, and Minnie

Torn from their families  
and forced to perform for  
humans for decades.





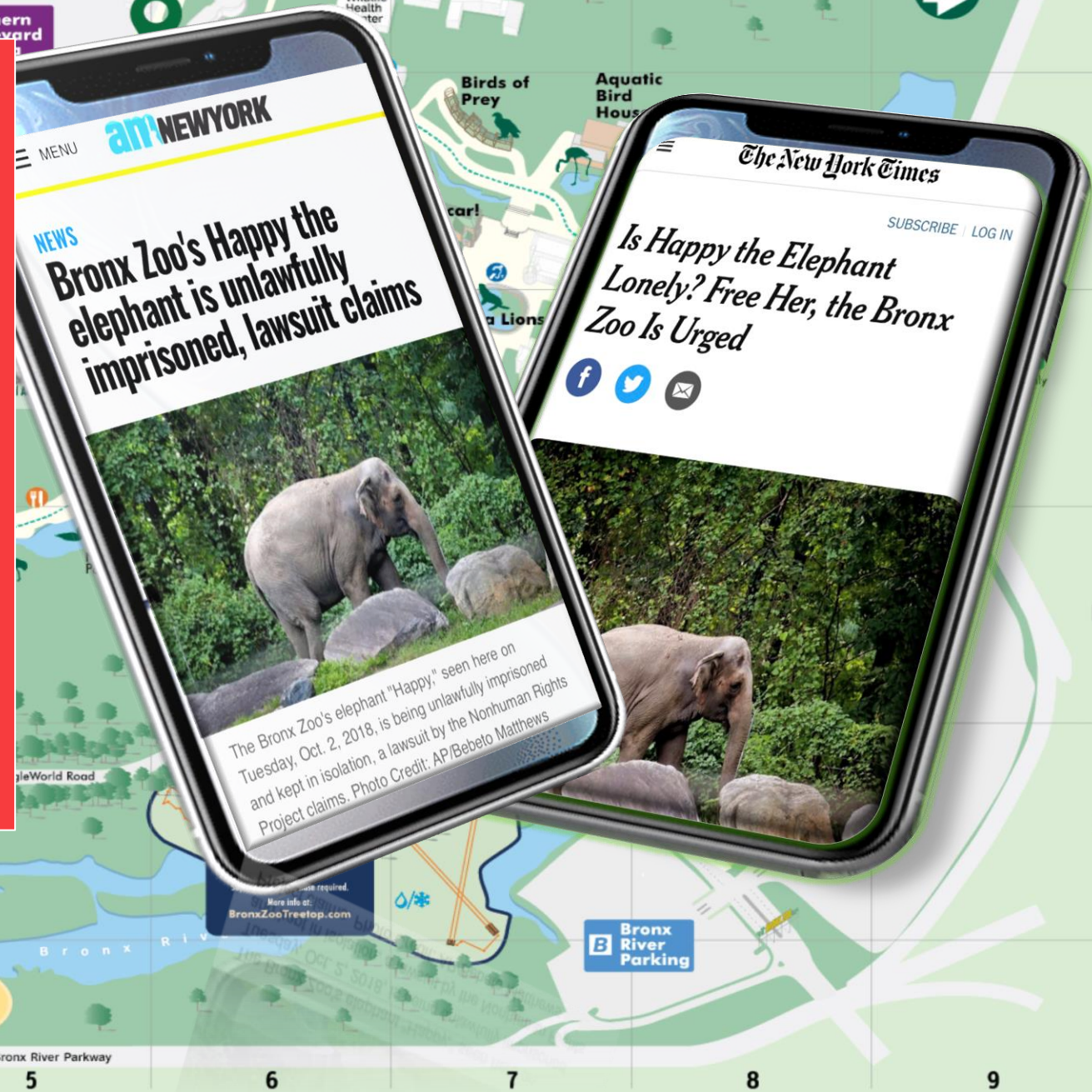
# Happy

First elephant to pass  
mirror self-recognition  
test; held alone at  
the Bronx Zoo.





Armed with Judge Fahey's concurring opinion, as well as another recent case from an upstate New York appellate court referring to the personhood of nonhuman animals as a matter of "common knowledge" (*People v. Graves*), the NhRP filed a habeas petition for Happy on October 2, 2018.



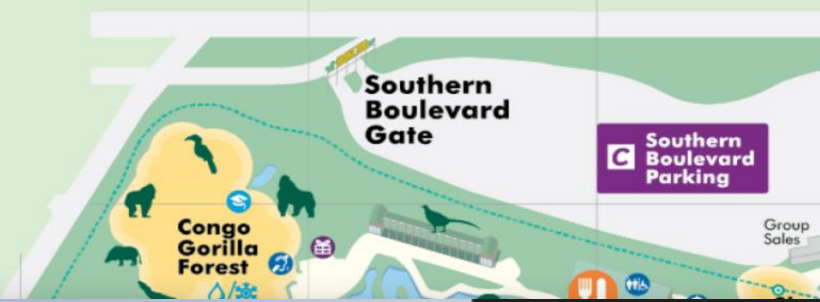


## **JIM BREHENY**

**DIRECTOR OF THE BRONX ZOO**

**"The Nonhuman Rights Project is exploiting the Bronx Zoo elephants to advance their own failing cause in the courts as they put forth ludicrous legal arguments and lies about our elephants, facilities and staff."**





**I HAVE THE RIGHT**  
to liberty, to socialize with members of  
my own species, to live in an environment  
similar to my natural habitat



Elephants are autonomous beings.  
It's time to recognize their  
fundamental rights.

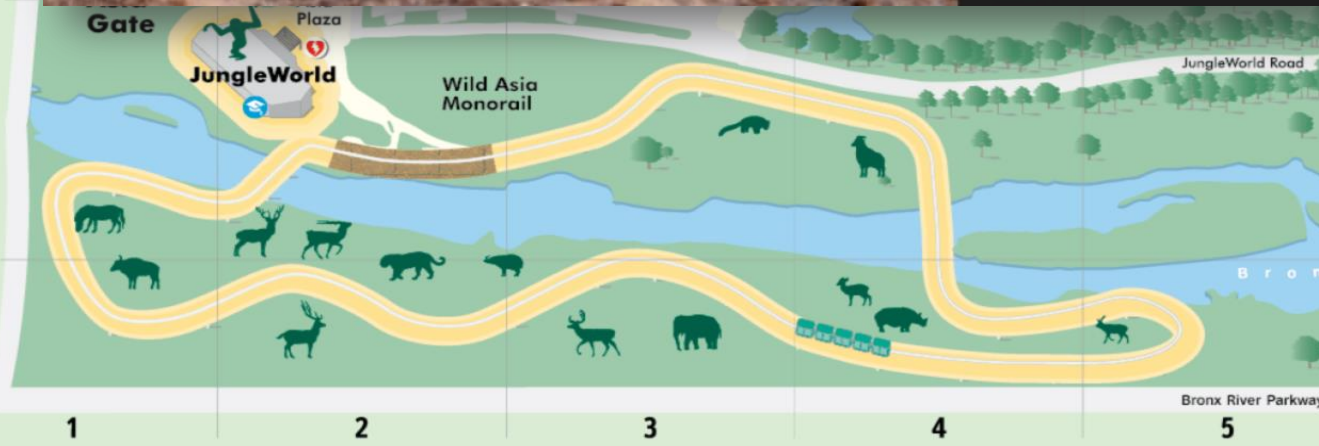
#RumbleForRights  
#NonhumanRights



NONHUMAN RIGHTS PROJECT



NhRP client Happy, an  
Asian elephant, housed at  
the Bronx Zoo



1 2 3 4 5



## Legislation

We will launch a campaign for the world's first nonhuman animal rights ordinance in a major US city in 2019.

It will seek rights to bodily liberty and bodily integrity for chimpanzees and elephants, much the same we are seeking through our lawsuits.

## THE POWER OF MUNICIPALITIES TO ENACT LEGISLATION GRANTING LEGAL RIGHTS TO NONHUMAN ANIMALS PURSUANT TO HOME RULE

Steven M. Wise, Elizabeth Stein, Monica Miller & Sarah Stone<sup>†</sup>

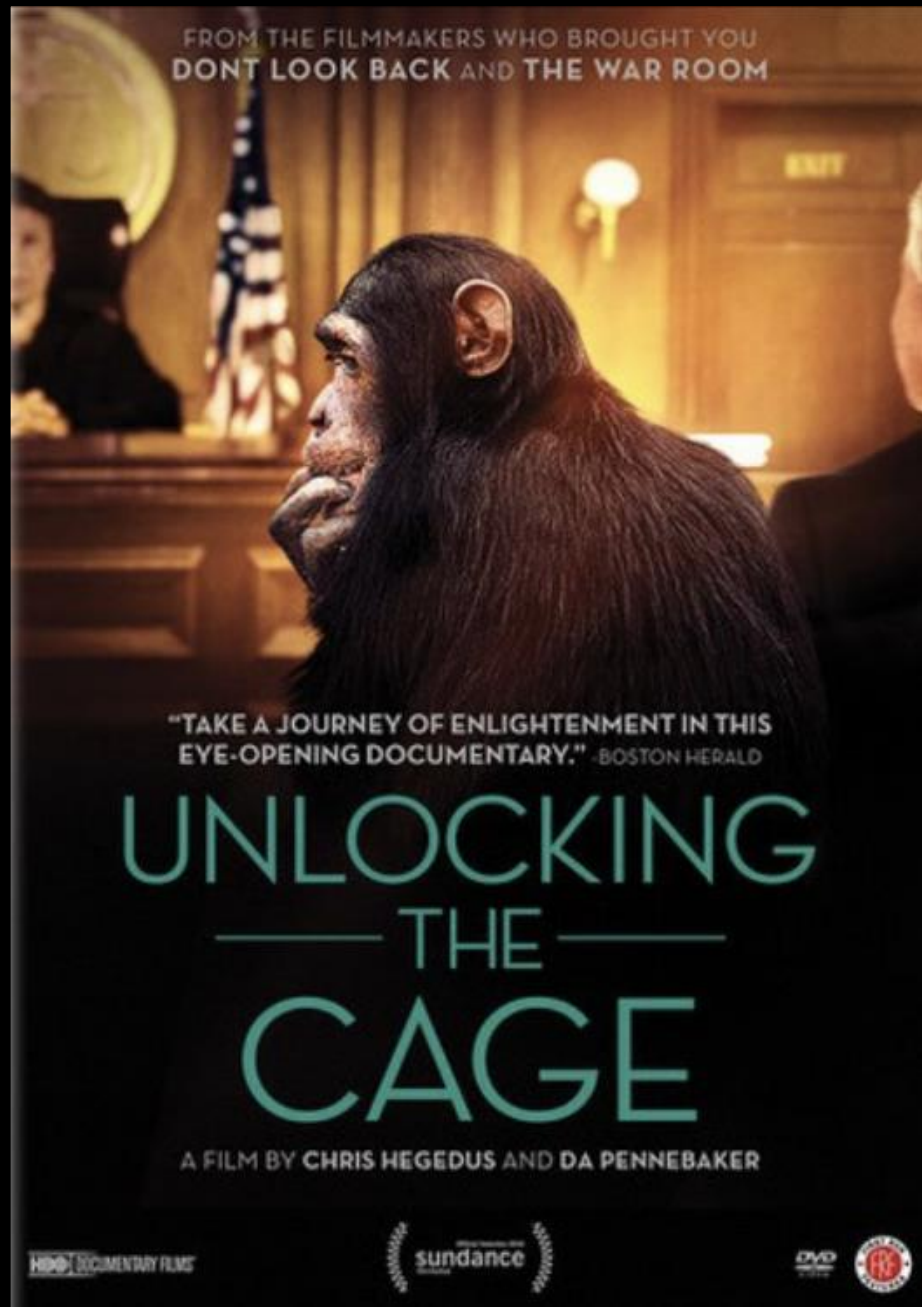
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<sup>†</sup> The co-authors are staff attorneys for the Nonhuman Rights Project, the mission of which is to attain fundamental legal rights for at least some nonhuman animals through litigation and legislation and whose work is the subject of the 2016 HBO Documentary Films presentation of the Pennebaker Hegedus Films production, *Unlocking the Cage*. They would like to acknowledge the following individuals who helped bring this article to fruition over several years: Kevin Schneider, Esq., Ryan Gordon, Esq., Natalie Prosin, Esq., and Professor Jessica Rubin.







## Education

Our work is the subject of the 2016 Pennebaker Hegedus/HBO documentary film *Unlocking the Cage*, which has been seen by millions around the world.





## Education

### Animals are thinking, feeling 'persons': Rights champion

Bella Jaisinghani  
@timesgroup.com

**Mumbai:** A bookstore in south Mumbai would have resembled George Orwell's animal farm on Friday. The captive penguins of Mumbai zoo, elephants like Lakshmi that were fed vada pao, bulls harnessed for jallikattu races and cows whose tails are broken by inhuman transporters would have loved to meet this American visitor: Animal rights activist Kevin Schneider was in Mumbai on his whistlestop tour of India before heading to Kathmandu for a conference. Schneider is executive director of the US-based Nonhuman Rights Project (NHRP) which advocates "breaking the legal wall that separates animals from humans".

His Mumbai host Sandeep Sibal introduced him to animal activists and lawyers to advocate his unique idea. NHRP recommends recognising animals as thinking, feeling "persons" with individual rights rather than creatures that can



Kevin Schneider was on a brief visit to Mumbai



be held captive and harnessed to serve human beings.

Schneider rued how mankind treats animals as property and possession. "Animals are not things. It reminds me of a similar battle in the 1780s when the move to abolish slavery began. Until then slaves were bought and sold, they were treated as chattel. We are fighting a similar battle to protect animals by filing cases on their

behalf, educating lawyers and running advocacy campaigns," he said.

NHRP, whose president is American author Steven M Wise, has defended elephants, dolphins and chimpanzees. "We are a resource, we can guide people and help develop a framework to deal with such issues in each country," Schneider said. He is aware of instances of man-animal conflict that have arisen here, like jallikattu. "We do receive pushback to say that preserving animal rights would take away some human rights. But that is an incomplete view. Enriching animal rights would help us protect human rights also," he said.

Kevin Schneider has a law degree from Florida State University. He was an attorney for four years, has worked with NHRP for over seven years and was appointed director two years ago. He turned vegetarian while still in college and advocates "plant-based food". He lives in New York where it is "getting easier" to find vegetarian options.







“How should we relate to beings who look into mirrors and see themselves as individuals, who mourn companions and may die of grief, who have a consciousness of ‘self?’ Don’t they deserve to be treated with the same sort of consideration we accord to other highly sensitive beings: ourselves?”

Jane Goodall



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To learn more, sign up for our email newsletter, or to make a donation to support our work, please visit:

[www.nonhumanrights.org](http://www.nonhumanrights.org)

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[@nonhumanlawyer](#)